

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE HARRIS,

Plaintiff,

CIVIL ACTION NO. 10-CV-13434

vs.

DISTRICT JUDGE GEORGE CARAM STEEH

BROWN, NURSE ADERY,
and JOHN DOE,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

**ORDER DENYING AS MOOT PLAINTIFF'S "EXPEDITED CONSIDERATION
MOTION DEMAND FOR JURY TRIAL, AND OBJECTION TO SUMMARY
JUDGMENT" (DOCKET NO. 20)**

This matter comes before the court on Plaintiff's "Expedited Consideration Motion Demand for Jury Trial, and Objection to Summary Judgment" filed on January 6, 2011. (Docket no. 20). No response has been filed to the motion and the time for responding has now expired. All pretrial matters have been referred to the undersigned for action. (Docket no. 11). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(f). This matter is now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(A).

Plaintiff, a Michigan state prisoner, brought this civil rights action pursuant to 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs. In his complaint, Plaintiff provided notice of his demand for a jury trial. (Docket no. 1 at 4). Subsequently, Plaintiff filed the instant "Expedited Motion Demand for Jury Trial, and Objection to Summary Judgment" pursuant in part to Federal Rules of Civil Procedure 38 and 39. (Docket no.

20).

Federal Rule of Civil Procedure 38(b) provides that “[o]n any issue triable of right by a jury, a party may demand a jury trial by . . . serving the other parties with a written demand - which may be included in a pleading - no later than 14 days after the last pleading directed to the issue is served.” Fed.R.Civ.P. 38(b)(1). Plaintiff properly demanded, in his complaint, a jury trial on all triable issues. Accordingly, Plaintiff’s request for a jury trial is moot.

Along with his jury demand, Plaintiff also “objects” to or opposes Defendant Adery’s November 16, 2010 Motion for Dismissal and for Summary Judgment. The local rules permit a party to file a single response brief within twenty-one days after service of a motion to dismiss or for summary judgment. E.D. Mich. LR 7.1. Plaintiff filed his first response to Defendant Adery’s Motion for Dismissal and for Summary Judgment on November 29, 2010. (Docket no. 18). He filed a second response in opposition to the motion on December 29, 2010. (Docket no. 19). Consequently, any arguments made in the present motion related to Plaintiff’s opposition to Defendant Adery’s Motion for Dismissal and Summary Judgment are in violation of the local rules and will not be considered by the Court.

Finally, page six of Plaintiff’s motion is entitled “Expedited Consideration Plaintiff’s Request for Preliminary Injunction and Temporary Restraining Order (TRO) for 180 Days.” (Docket no. 20 at 6). Requests for temporary restraining orders and for preliminary injunctions must be made by separate motion. E.D. Mich. LR 65.1. Plaintiff’s arguments related to a preliminary injunction and temporary restraining order are procedurally improper under the local rules and will not be addressed by the Court.

IT IS THEREFORE ORDERED that Plaintiff’s “Expedited Consideration Motion Demand

for Jury Trial, and Objection to Summary Judgment" (docket no. 20) is **DENIED AS MOOT**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: April 20, 2011

s/ Mona K. Majzoub

MONA K. MAJZOUB

UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Willie Harris and Counsel of Record on this date.

Dated: April 20, 2011

s/ Lisa C. Bartlett

Case Manager